



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1997

Mr. Miles K. Risley
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR97-0211

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30820.

The City of Victoria ("the city") received a request for the "full police report" concerning an allegation of indecency with a child. The request was made by the mother of the victim. You submitted the requested information to us for review and claim that it is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 34.08 of the Family Code. You also claim that the medical records of the child, submitted as part of the requested records, are exempt under section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 34.08 of the Family Code. The Seventy-fourth Legislature repealed section 34.08 of the Family Code and added section 261.201 to the Family Code. See Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 161 (Vernon). Section 262.201(a) provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information consists of "reports, records, communications, and working papers used or developed" in investigations made under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information. Consequently, the information in the requested file may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the agency that investigated the allegation, with one exception, which we will explain.

The file contains medical records that are covered by the Medical Practice Act, V.T.C.S. article 4495b. *See* V.T.C.S. art. 4495b, § 5.08(b) (making confidential "records of identity, diagnosis, evaluation, or treatment of patient that are created or maintained by a physician"). We observe that it is possible that the Medical Practice Act may authorize the release of medical records that are made confidential by section 262.201 of the Family Code. When two statutes conflict and cannot be harmonized, the more specific statute prevails as an exception over the general provision, whether it was passed before or after the general statute. *See Font v. Carr*, 867 S.W.2d 873, 881 (Tex. App.--Houston [1st Dist.] 1993, *writ dismissed w.o.j.*)

We believe that since the Family Code provision is more general than the Medical Practice Act access provisions, the Medical Practice Act provision prevails as an exception over the Family Code provision. The Family Code provision applies to "the files, reports, records, communications, and working papers used or developed" in a Family Code chapter 261 investigation of child abuse or neglect. Section 5.08 of the Medical Practice Act, in contrast, applies only to a narrow class of information generated within the strict confines of a specific professional relationship. Contained within that Medical Practice Act section is a detailed set of requirements for the release of medical information. We therefore believe that the Medical Practice Act access provisions prevail over Family Code section 262.201 to the extent of conflict and that records subject to release under the Medical Practice Act access provisions may not be withheld from disclosure under section 261.201 of the Family Code. Therefore, the medical records may be released only in accordance with the Medical Practice Act. *See* V.T.C.S. art. 4495b, § 5.08(c), (h)(5), (j), (k).¹

¹We note that one of the medical records appears to have been created by an agent or employee of a hospital. Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee
(continued...)"

This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

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Ref.: ID# 30820

Enclosures: Submitted documents

(...continued)

of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." Subchapter G of the Health and Safety Code contains a detailed set of requirements for the release of health care information. See V.T.C.A., Health and Safety Code §§ 241.152, 241.153, and 241.154.